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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,226

11/12/2003

John W. Rohrer

6313

7590
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03/24/2008

EXAMINER

LEGESSE, NINI F

ART UNIT

PAPER NUMBER

3711

MAIL DATE

DELIVERY MODE

03/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/706,226	Applicant(s) ROHRER, JOHN W.	
	Examiner Nini Legesse	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005 and 14 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10-12, 15 and 17 is/are rejected.
- 7) ☒ Claim(s) 13, 14, and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response to the office action of 07/13/05 is acknowledged on 10/27/05. In addition, Applicants response to the restriction requirement of 11/15/07 is acknowledged on 12/14/07.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 7, 8, 10, 15, and 17 stand rejected under 35 U.S.C. 102(e) as being anticipated by Hambly (US Patent No. 6,579,191).

With respect to claim 1, Hambly discloses a focused beam emitter (40), a holder (35), a base (27 or 22), base 27 or 22 are considered as being minimally visible, energy source (58), and activation means (54).

With respect to claim 2, the focused beam is a visible light (40).

With respect to claims 5 and 7, as shown on Figs. 1 and 6, the device is not physically attached to the putter.

With respect to claim 8, mechanical means (52) is capable of allowing the beam of the device to maintain its height or attitude relative to the ground.

With respect to claims 10 and 15, the device has a switch (54).

With respect to claim 17, target 80 is considered as a vertically oriented backstop screen.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hambly in view of Official Notice.

Hambly discloses the use of a laser source (40). However, the use of any other type of light mechanism including infrared, radio frequency or electro-magnetic sources would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the training device with any one of them since the examiner takes Official Notice of the equivalence of the above listed sources for their use in the golf art and the selection of any of these known equivalents to provide light in a training device would be within the level of ordinary skill in the art.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hambly. The device of Hambly appears to meet the claim (see laser actuation 50 in Fig. 2).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halsey in view of Ogden (US Patent No. 5,374,063).

Halsey fails to show a switch that is located on the grip section of the club. However positioning a switch on grip area is old in the golf art. Ogden is one reference among many that teaches a grip area switch location (see item 32 on Fig. 1). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to position switch (58) of the Halsey's invention at the grip area of the club in order to make the switch easily accessible to the user so that he/she would not have to bend to actuate the switch.

Allowable Subject Matter

Claims 13, 14 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 10/27/05 have been fully considered but they are not persuasive.

Applicant's response of 11/21/05 to the notice regarding a Non-Compliant amendment is noted. The illustrations provided for the sole purpose of assisting the examiner is considered and is appreciated.

Applicant's response to the restriction requirement of 11/15/07 is acknowledged. Claims 6 and 9 are withdrawn with traverse from further consideration as being drawn to a non-elected claim. Please note that the restriction requirement will be withdrawn and the restricted claims will be rejoined if claim 1 will be found allowable.

Applicant has stated that he is unclear if his argument of 04/20/05 was considered by the examiner. Please note that all the arguments were considered and another non-final office action was done and sent to Applicant on 07/13/05.

Applicant argues that even though Hambly discloses focused beam emitter, holder, base, energy source, and activation means, Applicant believes that these elements are grossly different from his claimed subject invention. It should be noted that the examiner is giving the broadest reasonable interpretation of the claims as set forth in MPEP 904.01(a). The examiner notes that apparatus claims must be structurally distinguishable from the prior art. SEE MPEP 2114. Examiner maintains that the structural limitations are met with Hambly.

It is noted that some of Applicant's arguments are directed to the function of the device. One example is that the Hambly device claims a "dynamic" while Applicant's invention describes and claims a "static...aim accuracy testing system". A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed

invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As stated supra, apparatus claims need to distinguish over the prior art with structure and not function or intended use.

Applicant argues the Hambly's emitter is in the holder below the golf ball like device not in the golf ball like device. Please note that the combination of the holder 35 the shaft 36 and the golf ball 37 of the Hambly device as shown on his Fig. 2 could be considered as one unit.

Applicant argues that the Hambly's device only deals with visible light and not non-visible light. Please note that the claim is alternative in that regard and requires only one or the other and not both.

In response to applicant's argument that the Hambly's base is not rigidly attached to or integral with his holder or ball and that it is huge and highly visible is not persuasive since what examiner is considering as a base is element 27 or 22 as shown on Fig. 6 of the reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini Legesse whose telephone number is (571) 272-4412. The examiner can normally be reached on 9 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nini Legesse/
Primary Examiner, Art Unit 3711

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